

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations of Environmental Conservation Law of the State of New York Article 27 and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York §360-1.5(a)(2)
by

ORDER

DEC CASE No.
R3-1861/9001

NYS DEC

1993

TIMOTHY PRESTO
123 Oak Avenue
Matamoras, Pennsylvania 18336

RESPONDENT

BACKGROUND AND BRIEF PROJECT DESCRIPTION

Pride Solvents and Chemical Co., Inc. (the "Applicant") seeks a permit to operate a hazardous waste management facility at 78-88 Lamar Street, West Babylon, Suffolk County. The permit is sought for an existing facility which stores and recycles hazardous waste solvents that are generated by metal finishing and electronic firms and by a variety of other industries and commercial businesses. The hazardous wastes are generated off-site and then shipped to the facility, where they are reclaimed in the facility's distillation unit. The facility accepts spent solvents only from companies it supplies; residues that it generates are disposed of off-site at authorized facilities. The facility's total container storage capacity is 360 55-gallon containers. Its storage and recycling of hazardous waste is presently authorized under a Resource Conservation and Recovery Act ("RCRA") Part "B" permit, which was issued by the federal Environmental Protection Agency ("EPA").

To continue facility operations, the Applicant is seeking from the Department of Environmental Conservation ("the Department", or "DEC") a Part 373 hazardous waste management facility permit. Department Staff wants the permit denied in part because the application fails to meet requirements of 6 NYCRR 373-2.8(h)(1). That section requires that "an owner or operator of a hazardous waste treatment, storage or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs." This liability coverage may be demonstrated in a number of different ways, which are outlined in 6 NYCRR 373-2.8(h)(1)(i)-(vi).

The Applicant now requests a variance from the requirements of 6 NYCRR 373-2.8(h)(1), as is provided for in 6 NYCRR 373-2.8(h)(3). That section states that a variance may be obtained "if an owner or operator can demonstrate to the satisfaction of the [DEC] commissioner that the levels of financial responsibility required by [6 NYCRR 373-2.8(h)(1)] are not consistent with the degree and duration of risk associated with treatment, storage or disposal at the facility or group of facilities." The Applicant's variance request consists of four letters: a letter dated February 21, 1991, from Arthur Dhom, Jr., president of Pride Solvents (Exhibit 7A, the attachments to which are Exhibit 7B); and three letters from Robert Del Gadio, Applicant's counsel, dated March 5, 1991 (Exhibit 7C), April 18, 1991 (Exhibit 7D), and July 12, 1991 (Exhibit 7E).

As its preferred alternative, the Applicant proposes to demonstrate financial responsibility for sudden accidental occurrences by a pledge of its net worth, coupled with personal guarantees from Arthur Dhom, Art Dhom, Jr., and William F. Tyree (see Exhibit 7A, page 8). This proposal requires a variance to the forms or types of authorized coverage, as there is no provision in the regulations which allows a company to pledge its net worth, and only corporate (not personal) guarantees are recognized under 6 NYCRR 373-2.8(h)(7).

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Form of Variance

The Department's regulations provide that if a variance is granted to the liability requirements, it "will take the form of an adjusted level of required liability coverage" [6 NYCRR 373-2.8(h)(3)]. The parties disagree as to what the term "level" means in this context. According to Department Staff, "level" means "amount". The Applicant submits it means "amount" and "type". The distinction is important because if the Applicant is correct, its preferred variance alternative may be entertained, despite its mechanisms (pledge of net worth, with personal guarantees) not being recognized under 6 NYCRR 373-2.8(h)(1)(i)-(vi). On the other hand, if DEC Staff is correct, the Applicant is restricted to its "fall-back" alternative (a \$500,000 letter of credit), which involves an acceptable mechanism, but an amount that is lower than required by regulation.

In this context, the term "level" is not defined by state regulations or by the federal regulations [40 CFR 264.147(a) and 265.147(a)] on which the state regulations are modelled. On the other hand, an EPA commentary (at 47 FR 16545, April 16, 1982) announcing a change to the federal regulations describes their variance provisions as allowing the regional EPA administrator to adjust the "amounts" of coverage required of an owner or operator of a hazardous waste management facility. This use of the term "amount" in describing a provision that allows for variances in the form of an adjusted "level" of required liability coverage suggests that "level" means only "amount" and not also "type". This is also suggested by the common dictionary definitions of "level" as "a position in a scale or rank (as of value, significance, importance, or achievement)" and as "the magnitude of a quantity considered in relation to an arbitrary reference value" (Webster's Ninth New Collegiate Dictionary, c.1988, page 686).

My conclusion is that by means of a variance, the "level" (or "amount") of liability coverage may be adjusted, but only within the mechanisms for providing that coverage which are recognized explicitly by regulation. This means that, by law, the Applicant cannot substitute another mechanism (or "type") of coverage, and that its proposal for a pledge of its net worth, coupled with personal guarantees, cannot be considered.

My conclusion is unaffected by language in 6 NYCRR 373-2.8(h)(4), which authorizes the Commissioner to adjust levels of financial responsibility, apparently in the absence of a variance request. Cited by the Applicant, this section states that "an owner or operator must furnish to the commissioner, within a reasonable time, any information which the commissioner requires to determine whether cause exists for . . . adjustments of the level or type of coverage" (Emphasis added). [Similar language in 6 NYCRR 373-2.8(h)(3) states that the Commissioner may require an owner or operator who requests a variance to provide such technical and engineering information as he deems necessary to determine a "level" of financial responsibility other than that required by 6 NYCRR 373-2.8(h)(1). In this section, the words "or type" are not present.]

Whatever is meant by 6 NYCRR 373-2.8(h)(4), it relates to adjustments (presumably upward) that the Commissioner might make to an owner/operator's levels of financial responsibility, and not to reductions in those levels that an owner/operator, using 6 NYCRR 373-2.8(h)(3), might seek by means of a variance. These sections refer to two separate procedures (a variance procedure, initiated by the regulated entity, and an adjustment procedure, initiated by DEC) and should not be read together as suggesting that the Commissioner may grant a variance to the level or type of financial responsibility.

If anything, use of the words "level or type" in 6 NYCRR 373-2.8(h)(4) suggests that they have different meanings, and that "level" does not imply "type", but rather "amount", as is also suggested by the EPA commentary, which is cited above.

Evidence Relevant to a Variance Determination

The Department's regulations [6 NYCRR 373-2.8(h)(3)] state that a variance may be obtained if an owner or operator can demonstrate to the satisfaction of the Commissioner that the levels of financial responsibility required by 6 NYCRR 373-2.8(h)(1) "are not consistent with the degree and duration of risk associated with treatment, storage or disposal at the facility. . . If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the commissioner's

DEC Staff has proposed to offer evidence regarding the facility's compliance history. In particular, Staff would offer evidence concerning groundwater contamination that has resulted in the designation of the West Babylon Industrial Park, where the facility is located, as an inactive hazardous waste site. The Applicant has been named as a "potentially responsible party" for remediation of the site and has been identified by DEC as a likely source of chemicals in a groundwater plume which is said to extend down gradient from the facility.

According to DEC Staff, a facility's past history of spills would be relevant to the degree and duration of risk now present in its operations. I agree, but only if that history is defined in such a way that the recurrence of past events, or ones like them, might be reasonably foreseen. Here this showing has not been made due largely to Staff's poor offer of proof. Under my questioning, Staff admitted it had no particular evidence concerning the dates of spills or how they occurred - - evidence which would be relevant to comparing these events (if they even actually happened) to ones that might happen in the future. Staff conceded it was not sure whether the Applicant caused any groundwater contamination and admitted this was still being explored in hydrological studies. The Applicant argued reasonably that it is one of more than 200 industrial facilities within the West Babylon Park, and that pollution which might exist there could be due to any number of activities within and outside the park boundaries.

The Applicant acknowledged no spills having occurred at its facility, and DEC Staff made no offer of its own, except to say that it thought there had been one oil or petroleum spill, and that this spill had not been reported. It was not explained when this spill occurred or how it became known to DEC, if in fact it happened. Assuming the spill occurred, the failure to report it would bear on the Applicant's fitness and perhaps also on the degree and duration of risk presented by the facility's operations. At any rate, no solid offer was made, so even if some relevance were established, no basis was shown to pursue the matter further.

There is also no basis to pursue Staff's allegation that the Applicant failed to make timely payments to a closure trust fund. This violation of 6 NYCRR 373-3.8(d)(1)(iii) was apparently corrected by the Applicant after having been brought to its attention in a letter from DEC dated July 28, 1992.

Evidence shall be heard only with regard to the following violations, as alleged in the affidavit of DEC inspector Agnes Gara, dated May 21, 1993:

- - Failure to update the facility's contingency plan [6 NYCRR 373-3.4(e)] (1992 inspection); and
- - Failure to update the facility's waste analysis plan [6 NYCRR 373-3.2(d)(3)(ii)] (1991 and 1992 inspections).

According to DEC regulation, the facility's contingency plan "must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil or surface water" [6 NYCRR 373-3.4(b)]. On its face, it would appear that if the plan is not revised as needed, this would affect the degree and duration of risk associated with the facility's operation.

So, too, it would be relevant to know that the facility has an adequate plan to ensure that wastes received at the facility actually match the identity of the waste designated by the shipper [6 NYCRR 373-3.2(d)(3)].

The Applicant apparently has not been charged with the two violations which are cited above, although according to the Gara affidavit, they were brought to its attention during her exit interviews. The fact they have not been the subject of enforcement proceedings does not preclude the consideration of these alleged violations, for the first time, within this permit proceeding, although Staff shall have the duty to prove them.

It is unknown whether the facility has been inspected in 1993, but if it has, it will be relevant to know whether these violations still exist, and if not, when and how they were corrected.

may be appealed in whole or in part. Any briefs in support of the rulings and in opposition to any appeals that are filed must be received by August 16, 1993. The parties shall ensure transmission of all papers to me and each other at the same time they are sent to the Commissioner.

ORDER OF DISPOSITION

I will arrange for a conference call with counsel for the parties once the deadline for appeals has passed or, assuming appeals are filed, after they have been decided by the Commissioner. The call will be held to establish hearing dates and establish a schedule for the submission of pre-filed direct testimony, pursuant to 6 NYCRR 624.7(b)(6)(ii). As the Applicant has the burden of proof, its direct testimony shall be pre-filed first. With its pre-filed testimony, the Applicant shall provide a draft of its letter of credit, using the format in 6 NYCRR 373-2.8(j)(10). This shall be accompanied by a statement as to how the amount of liability coverage offered by that letter differs from that prescribed by 6 NYCRR 373-2.8(h)(1). The statement shall also briefly summarize the grounds proposed by the Applicant for acceptance of its letter of credit.

Both parties' evidence shall be limited to that which is relevant to a decision on the variance, as determined by these rulings except to the extent they are modified as the result of either party's appeal.

Albany, New York Edward Buhrmaster July 29, 1993 Administrative Law Judge

12-18-02

Meeting

Mike
Jim
Pud
Fred
OR

Honolulu killed - no enforcement - why

Review record -
Speak to Port Captain &
Steve Hamilton



what places in
enforcement case -
why not a case?



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EPA Home > Region 2 > Waste > NY RCRA Cleanup Fact Sheet > Pride Solvents & Chemical Company Incorporated

Pride Solvents & Chemical Company Incorporated

<u>EPA Identification Number:</u>	NYD057722258	
Facility Location:	88 Lamar Street, West Babylon, New York	
Facility Contact Name:	Arthur Dhom, Jr. (516) 758-0200	
EPA Contact Name:	Michael Infurna, (212) 637-4177, infurna.michael@epa.gov	
New York State Department of Environmental Conservation (NYSDEC) Case Manager:	Gary Casper, (518) 402-8594	
Last Updated:	January, 2002	
<u>Environmental Indicator Status:</u>	Human Exposures Under Control: NO Groundwater Contamination Under Control: NO	

None

The information on this site will be provided in the near future. Please check periodically.

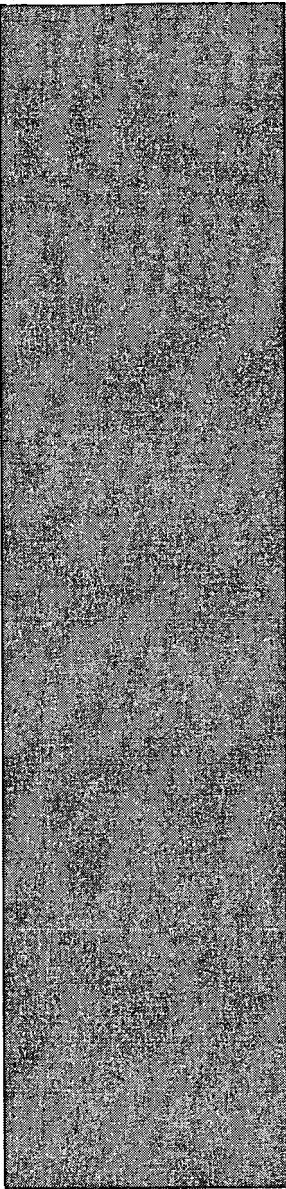
Databases

The Government Performance and Results Act passed by Congress in 1993 mandated that all federal agencies -- including EPA -- develop measurable targets and strategic plans for their operations. One of EPA's goals is that by 2005, 95% of the 1,714 high-priority RCRA cleanups being undertaken now (of which this site is one) will have human exposures under control, and that 70% of them will have contaminated groundwater under control.

Copies of supporting technical documents and correspondence are available for public review at the New York State Department of Environmental Conservation. For appointment, please call **Gary Casper at (518) 402-8594**.

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Cleanups**

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Last updated on Tuesday, October 29th, 2002
URL: <http://www.epa.gov/region02/waste/fspride.htm>

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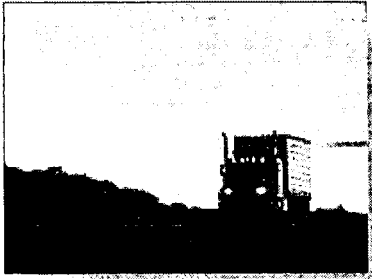
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| Alnor Oil | Finishing Equipment | Rhodia HPCII |
| Angus Chemical | Georgia Pacific | Rhodia Silicones |
| Aragonesas | Grain Processing | Sasol |
| Archer Daniels Midland | Harcros Organics | Shell Chemical |
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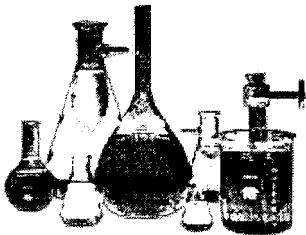
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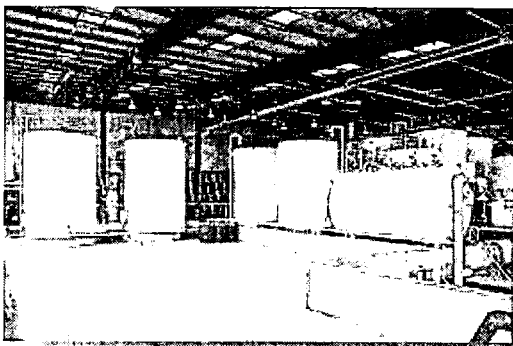
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Ronald Voelkel

01/16/03 12:24 PM

To: negarry@gw.dec.state.ny.us
cc:
Subject: Pride Solvents

Hi, Nancy.

This is a follow-up to our telephone conversation earlier today. The EPA is determining the feasibility of pursuing formal enforcement actions against Pride Solvents of West Babylon. We would appreciate that a copy of the soon-to-be-released draft Remedial Investigation (RI) be sent to the following address:

Ron Voelkel
DECA-RCB
US EPA Region 2
290 Broadway, 22nd floor
New York, NY 10007-1866

I'll keep you informed of our progress. If you have any questions, I can be reached at 212 637-3156.

Thanks, Nancy.

Ron

Michael Infurna
01/21/03 09:46 AM

To: Ronald Voelkel/R2/USEPA/US@EPA
cc:
Subject: Re: Pride Solvents

FYI

----- Forwarded by Michael Infurna/R2/USEPA/US on 01/21/03 09:45 AM -----



Gary Casper
<gdcasper@gw.dec.state.ny.us>
01/21/03 09:43 AM

To: Michael Infurna/R2/USEPA/US@EPA
cc:
Subject: Re: Pride Solvents

Mike,

I spoke with Ron Vokel a few weeks back and it sounded promising. Hope we can do this. My undivided (as much as it ever is, anyway) attention is available. I will have a copy ready for you. I think there were two volumes, only the first of which was relevant. If you do not need the whole thing let me know to save on copying.

Pride Solvents and Chemical Co.

RI/FS needed

1-52-025

Structure,

1.3 Acres

Organic solvents

Heavy metals

1,1,1 Trichloroethane

Methylene chloride

Tetrachloroethene

Freon-113

1,1,3 Trimethylbenzene

Contamination of sole source aquifer; downgradient private drinking wells closed due to high levels of organic solvents; public water available and affected private wells have been abandoned; no contamination has been detected at public wells; periodic sampling of these wells will continue; migration of soil vapors needs to be addressed in future investigations